

Shipping and handling charges are not taxable if it can be shown that the charges are agreed to separately from the selling price of the tangible personal property sold and, the charges are actually reflective of the costs of shipping. See 86 Ill. Adm. Code 130.415. (This is a GIL.)

April 19, 2006

Dear Xxxxx:

This letter is in response to your letter received March 6, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing to request a General Information Letter Ruling regarding freight charges. We use a vendor, ABC, headquartered in CITY/STATE who ships various orders via common carrier to our Illinois locations. They are currently collecting IL tax on the freight amount with the explanation that since they are shipping to locations where we would not have the option of picking up our merchandise, tax is due on the shipping charge.

It seems that the shipping charges would be classified as exempt under two scenarios. First, under 130.415, having delivery made by the seller for the agreed purchase price of the property, plus an ascertainable delivery charge is acceptable evidence that the shipping charges are agreed upon separately from the selling price of the property. My findings, as indicated in the attached e-mail by XYZ Managers and supervisors located in Illinois who place phone orders with ABC, indicate that they are quoted only the price of the products being purchased over the phone at the time of the order. Shipping charges are not addressed except on occasion when the person placing the order requests a quote for next day delivery. Further, when placing an order on their internet site (copy enclosed), the confirmation you receive is only for the merchandise amount with a message stating that additional charges for shipping, art work, etc. will be communicated prior to shipment. These scenarios indicate shipping charges being agreed to separately from the purchase price of the property.

The second instance that would deem shipping exempt would be treatment as mail orders as indicted by ST02-0072 GIL. This is assuming that their freight costs are reflective of actual cost, which I have inquired about but have not received a response.

Could you please confirm or correct these assumptions for XYZ with a copy to ABC? ABC insists that they must collect tax on shipping in IL until instructed otherwise by IL.

Thank you're [sic] your assistance in this matter. Please contact me should you have further questions.

## **DEPARTMENT'S RESPONSE:**

For information regarding the Department's regulation on the treatment of transportation and delivery charges under the Retailers' Occupation Tax Act please see 86 Ill. Adm. Code 130.415. Transportation and delivery charges, also designated as shipping and handling charges, are not taxable if it can be shown that the charges are agreed to separately from the selling price of the tangible personal property sold and the charges are actually reflective of the costs of shipping. To the extent the transportation and delivery charges exceed the costs of shipping, the charges will be subject to tax.

As noted in subsection (d) of Section 130.415, if the seller and the buyer agree upon the transportation or delivery charges separately from the selling price of the tangible personal property which is sold, then the cost of the transportation or delivery service is not a part of the "selling price" of the tangible personal property which is sold, but instead is a service charge, separately contracted for, and need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability.

The best evidence that transportation or delivery charges were agreed to separately and apart from the selling price is a separate and distinct contract for transportation or delivery. However, documentation which demonstrates that the purchaser had the option of taking delivery of the property, at the seller's location, for the agreed purchase price, or having delivery made by the seller for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice.

The documentation submitted with your letter request indicates that "ABC never mentioned tax and only sometimes mentioned the shipping" and "when I place orders, it is over the phone and they never talk about tax or shipping." It appears that the shipping charges are in fact not separately contracted for between the store managers and the seller. In addition, your request references the fact that the store managers do not have the option of picking up the merchandise at the seller's location. Based on this information, we believe that it was proper to tax the shipping and handling charge on these transactions.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess

Associate Counsel

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